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APPELLANT PRO SE:

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**IN THE  
COURT OF APPEALS OF INDIANA**

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JERAMY HEAVRIN,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 46A05-0604-CV-184
	)	
INDIANA DEPARTMENT OF CORRECTION,	)	
	)	
Appellee-Defendant.	)	

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APPEAL FROM THE LAPORTE SUPERIOR COURT  
The Honorable Thomas G. Pawloski, Magistrate  
Cause No. 46A05-0604-CV-184

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**October 5, 2006**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAKER, Judge**

Appellant Jeramy Heavrin contests the small claims award for property he lost while detained by the Department of Correction. Specifically, Heavrin contends that the award of \$86.50 was insufficient to compensate him for the fair market value of his lost property. Finding that the award was sufficient based on the evidence presented, we affirm the judgment of the trial court.

### FACTS

On October 7, 2004, Heavrin was transferred from the Pendleton Correctional Facility (PCF) to the Wabash Valley Correctional Facility (WVCF) for observation for a deviated septum. His property was boxed and sent with him, but he did not have access to it while he was at the infirmary. On October 21, 2004, Heavrin was transferred to the Indiana State Prison (ISP). His property was returned to him the next day, and he reported that fifty-seven college textbooks and several hygiene products were missing.

On January 12, 2005, Heavrin filed a Notice of Loss of Property tort claim with WVCF. After an investigation by the Office of the Attorney General, the tort claim was denied on April 14, 2005. Heavrin subsequently filed a small claims action on May 24, 2005, and a bench trial was held on January 31, 2006. At the bench trial, Heavrin produced a copy of his college transcript as evidence of the missing books. He also produced a letter from the Ball State University School of Extended Education stating that the average price of a book for the program was \$60. The trial court ruled in favor of Heavrin and awarded him \$86.50. Heavrin now appeals the sufficiency of that award.

## DISCUSSION AND DECISION

Heavrin argues that the small claims court erred by not awarding him greater damages for his missing property. Specifically, Heavrin claims that the evidence established that the fair market value of the property was far higher than the \$86.50 award.

As we consider this argument, we observe that judgments in small claims actions are subject to review as prescribed by relevant Indiana rules and statutes. Counciller v. Ecenbarger, Inc., 834 N.E.2d 1018, 1021 (Ind. Ct. App. 2005). When reviewing claims tried to the bench without a jury, we will not set aside the judgment unless it is clearly erroneous and we will give due regard to the trial court's opportunity to judge the credibility of the witnesses. Id. In determining whether a judgment is clearly erroneous, we do not reweigh the evidence or determine the credibility of witnesses but consider only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom. Id. A deferential standard of review is particularly important in small claims actions, where trials are informal and have the sole objective of dispensing speedy justice between the parties according to the rules of substantive law. Lae v. Householder, 789 N.E.2d 481, 483 (Ind. 2003).

Generally, damages for the total destruction of personal property are measured by the fair market value of the property at the time of the loss. Ridenor v. Furness, 546 N.E.2d 322 (Ind. Ct. App. 1989). Fair market value is the price a willing seller will accept from a willing buyer. Campins v. Capels, 461 N.E.2d 712, 719 (Ind. Ct. App. 1984).

Heavrin argues that the trial court's finding regarding his damages is clearly erroneous because the award does not represent the fair market value of the property he lost. Heavrin claims that he lost fifty-seven college textbooks, and the State claims that he lost between twenty-five and thirty-five textbooks. Notwithstanding the number of textbooks lost, Heavrin's evidence does not adequately establish the fair market value of the lost textbooks. At trial, Heavrin presented a letter from Ball State University asserting that the cost of an average textbook is \$60.<sup>1</sup> However, that price reflects the average purchase price for "new and used texts," tr. ex. 1, but all of Heavrin's textbooks were used. Tr. p. 8.

Furthermore, the buyback price that a bookstore actually gives a student who returns a used textbook is far lower than the price at which the bookstore will sell the used textbook. The buyback price is typically 50% of the original price if the school is going to reuse the book and 0% to 30% if the book will not be reused. <http://en.wikipedia.org/wiki/Textbook> (last visited Sept. 15, 2006). Heavrin purchased his textbooks between 1999 and 2003. Therefore, it is likely that new editions had been published for many of his textbooks and that the school would no longer have used his old editions. Consequently, the average price of \$60 that Heavrin presented at trial needed to be reduced to represent the true fair market value of Heavrin's lost textbooks. As noted above, we will only overturn the judgment of the trial court if it is clearly erroneous. Based on this record, we cannot say that the award of \$86.50 was clearly erroneous.

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<sup>1</sup> On appeal, Heavrin submitted new valuations from Ball State University that he obtained after trial. However, "[t]he Record on Appeal shall consist of the Clerk's Record and all proceedings before the trial

The judgment of the trial court is affirmed.

VAIDIK, J., and CRONE, J., concur.

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court . . . .” Ind. Appellate Rule 27. Therefore, we cannot consider these figures because they were not presented to the trial court.